

## Discharge Letters: What Should Be Included?

The possibility of transfer or discharge from a nursing facility can be both frightening and stressful for residents and their families. Recently, the Northern Virginia Long-Term Care Ombudsman Program has received copies of several letters of discharge from different nursing facilities. While the letters have varied in content, our office would like to clarify information regarding the discharge process and what should be included in discharge letters.

- 1) **The law has very definite regulations regarding involuntary transfers and discharges.** According to the Omnibus Budget Reconciliation Act of 1987 (OBRA 1987) for Medicare and Medicaid participating nursing facilities (42CFR483.12), nursing facilities are prohibited from transferring or discharging a resident unless it can establish that one of the permissible reasons for transfer/discharge exist. Those reasons are:
  - The nursing facility cannot provide adequate care for the resident;
  - The resident's health has improved to the point that he or she no longer needs nursing facility care;
  - The safety of individuals in the facility is endangered;
  - The health of others in the facility would otherwise be endangered;
  - The resident has failed, after reasonable and appropriate notice, to pay for care (although the facility cannot evict a resident who is waiting for Medicaid eligibility and should work with other state agencies to obtain payment if the resident's money is being held by a family member or other individual); or
  - The facility ceases to operate.
- 2) Before proposing a transfer or discharge, a nursing facility must identify and try to meet the resident's individual medical, nursing, and psychosocial needs. This may involve evaluating the resident's current care plan and developing and implementing a revised plan of care designed to meet those needs. Many of the permissible reasons for transfer or discharge can be addressed through this type of assessment and care planning.
- 3) If the facility has tried to meet the resident's needs and feels a transfer or discharge is appropriate, it must record the reason for transfer/discharge in the resident's clinical record, and notify the resident and the resident's family member, guardian, or legal representative in writing. **The statement must include:**
  - The reason for the transfer or discharge;
  - The location the resident will be moved;
  - The date of transfer or discharge;
  - Information about the resident's right to appeal to the appropriate state office concerning the transfer or discharge, and;
  - The name, address, and phone number of the State Long-Term Care Ombudsman (For the Northern Virginia area which includes the city of Alexandria and the counties of Arlington, Fairfax, Loudoun and Prince William, the local ombudsman program will suffice).
  - In cases where the resident is developmentally disabled or mentally ill, the notice must include the name, address, and phone number of the agency responsible for advocating for them.

**A resident and/or the resident's family member, guardian, or legal Representative has the right to appeal the nursing facility's decision to transfer or discharge him or her through a process known as an administrative law hearing. The transfer or discharge notice must include information about how to request a hearing and the resident's right to use legal counsel or other spokesman at the hearing. Therefore, the following agencies must be included in a letter of transfer or discharge:**

**Department of Medical Assistance Services**

*Division of Client Appeal*

600 East Broad Street

Suite 1300

Richmond, Virginia 23219

804-367-8488

**Center for Quality Health Care Services and Consumer Protection**

*Office of Health Facilities Regulation*

3600 W. Broad Street, Suite 216

Richmond, Virginia 23230

800-955-1819

**Department for Rights of Virginians with Disabilities**

202 North 9<sup>th</sup> Street, 9<sup>th</sup> Floor

Richmond, Virginia 23219

800-533-3962

**In addition to requesting a hearing, a complaint may be filed. The Ombudsman Program information must be included in case the resident and/or the family member, guardian, or legal representative wants to discuss the matter with an Ombudsman to determine if a complaint is warranted:**

**Northern Virginia Long-Term Care Ombudsman Program**

12011 Government Center Parkway, Suite 708

Fairfax, Virginia 22035-1104

703-324-5861

- 4) The law requires that a nursing facility inform the resident and the resident's family member, guardian, or legal representative about a transfer or discharge at least thirty days in advance.**

Some of the letters we received have listed the Ombudsman Program as the agency with whom the resident/family appeals a discharge notice. **The Ombudsman Program DOES NOT operate the appeals process referred to in OBRA (Omnibus Budget Reconciliation Act of 1987) nor does the Program have the statutory authority to execute an appeals process.** Persons contacting the Northern Virginia Long-Term Care Ombudsman Program regarding a transfer or discharge notice would receive complaint counseling to assist them with self-advocacy. If further intervention were necessary, the Ombudsman Program would attempt to address the concern through mediation or complaint investigation. These methods of intervention, while hopefully successful in achieving a resolution, are not a substitute for the formal appeals process.